



Submission to the National Human Rights Consultation June 2009
By Vixen Victoria

Vixen is the Victorian Sex Industry Network. We are a network of sex workers who meet regularly to discuss and be proactive about issues affecting our lives. We aim to create a fun and sex worker safe space that celebrates our work, who we are and what we have in common. Recognising that there has been no 100% sex worker representative organisation in Victoria since the days of the Prostitutes Collective of Victoria, Vixen aims to connect sex workers in a unique and much needed way. Vixen operates as purely independent, without funding and on the energy and determination of sex workers themselves. As such we are not bound by any funding terms and can work towards what we believe to be pro-sex work ideology.

We are proud of who we are and what we do and regularly catch up for social support, plan events and to discuss issues that are important to us. We always try to actively assert the pro-sex work agenda when appropriate, responding to relevant topics as they arise.

We are grateful to the human rights consultation committee for allowing this opportunity to contribute to this process. Victorian sex workers feel issues relating to their human rights are very rarely discussed, impacting on us and our work greatly because our human rights can be so compromised. We also feel as though we have little representation to be effective when it comes to the opportunities to address systemic factors, such as legislation, that lead to infringements of our rights.

Which human rights (including corresponding responsibilities) should be protected and promoted?

Vixen believes the rights outlined in the Victorian Charter of Human Rights are an excellent starting point in developing a foundation of rights that should be protected and promoted.

However, we are also too conscious of its limitations. We believe in the freedom to work in whatever occupation an individual chooses. Too often in discourses that conflate human trafficking and exploitation with sex work, there is an over-emphasis on forced labour and the reaction has been to the negligence of an individual's right to choose. This is evident by the presence of a provision regarding the "Freedom from forced work" in the Victorian Charter of Human Rights, but the absence of a provision regarding "The right to work." Sex workers feel that this right should be as protected and promoted as all other rights currently represented in the Charter. We would not be the only ones to benefit by such a provision; it speaks to the right of people living with a disability and chronic illness to seek employment amongst other examples. The right to work is widely acknowledged (by the Universal Declaration of Human Rights, CEDAW and others) as being part of the human right to live in freedom from poverty.

Are these human rights currently sufficiently protected and promoted?

Sex workers in Victoria are subject to the stringent regulation of the Prostitution Control Act 1994 and the Prostitution Control Regulations 2006. While this legislation is successful in establishing a licensing system in Victoria, we believe that it is to the detriment of the human rights of sex workers and other workers in the Victorian sex industry. It is clear that these laws are not founded on the basis of human rights. The two examples listed here illustrate how entrenched discrimination leads to the corrosion of human rights on a broad, overarching level as well as at a micro-level in the detail of legislation:

- **The focus on Criminalisation:** The establishment of sex work legislation has resulted in the creation of a legal industry but also of an illegal industry. Such a separation has resulted in disparity when it comes to the rights of sex workers. For example, Street based sex workers are subject to a high degree of physical danger (because people who would violate them perceive little consequence to doing so) and limited protection under the law (because sex workers may feel like they cannot approach the police should a crime be committed against them) due to their criminalised status. This increased risk of exploitation and lack of protection under the law is afflicted upon all sex workers excluded from the legal industry including, as stated, street based sex workers but also HIV positive sex workers, migrant sex workers, sex workers in illegal brothels and underage sex workers. The rights of these workers are clearly insufficiently protected by any measure.
- **Mandatory testing:** Sex work Legislation dictates that a sex worker must submit to mandatory monthly testing to work or if they are to be legally protected from charge in the instance that a sexually transmitted infection should take place in the course of their work, despite the absence of risk. If working for an employer, they must disclose private medical information regarding their attendance for this testing. Despite the necessity for sex workers to consult a medical professional as a prerequisite to work, that doctor may refuse to see a sex worker on moral grounds. This emphasis on the sexual health status of sex workers reinforces the unfounded social prejudice that sex workers are vectors of disease (which has been disproved by epidemiological evidence) and that we cannot be trusted to be responsible for our own sexual health (again, disproved by evidence).

Presently, there are limited mechanisms in place for sex workers to flag such instances of discrimination. The stigma that drives criminalisation of our industry also prevents us from access fair and just processes that protect other workers in other industries. Anti-discrimination legislation does not include protection from discrimination based on chosen occupation. Corroded worker solidarity and the status of sex workers as independent subcontractors have created systemic barriers to sex workers to effectively act collectively to advocate for improved industrial relations issues and worker rights. It is evident to sex workers that many of the rights afforded to people in other professions are not made as available to us.

How could Australia better protect and promote human rights?

With regards to the compromised human rights of sex workers, there are a number of strategies that can be deployed to ensure the establishment, recognition and protection of equality before the law for Victorian Sex workers.

One of the first steps towards this is to acknowledge the gaps created by existing legislation. The operation, transparency and review process of sex work legislation is unclear and highly questionable. The issuing of an independent enquiry to establish a statement of compatibility with the Victorian Charter of Human Rights will go some way to achieving this. If human rights are to be protected with any integrity, then a general review of current legislation needs to occur.

Further to the review of current legislation is the move away from criminalisation. It has been demonstrated that criminalisation contributes significantly to stigma and discrimination. Australia has demonstrated its commitment to progressing human rights by decriminalising other communities (e.g. the GLBTI community), this progress should be extended to Australia's sex working community. Decriminalisation of sex work is the internationally recognised best practise model of sex industry regulation. "Sex work has been wrongly identified in many countries as a form of social pathology, a type of maladaptive social behaviour. This model leads to policies which are incredibly harmful and dangerous. Instead, sex work needs to be recognised as a form of labour, with access to the same labour rights, occupational health and safety rights and the same human rights that people in other occupations enjoy." (Wotton, 2007)

Another step towards the better protection and promotion of human rights is acknowledging the role that affected communities play in establishing human rights for themselves. Peer education is widely acknowledged as playing a key role in empowering individuals amongst marginalised communities around the world. Undermining this progress is the funding of organisations that claim to speak on behalf of sex workers instead of allowing sex workers to speak for themselves. In other jurisdictions around Australia, sex worker constituted organisations have enjoyed success in their securing and promotion of human rights. And whilst some sex workers take up the initiative to work together to create a collective representative voice, there is currently no commitment by government to ensure this level consultation and social inclusion occurs in the wider community in Victoria. Relying on volunteer energy within affected communities is limited to the drive of the individuals involved; there needs to be a greater commitment of resources and accountability in this area to ensure long term, effective outcomes are to be achieved.

Finally, while localised efforts are commendable, there needs to be a consistent national approach to human rights if equity for all is to be secured. Sex workers know this too well, while some states celebrate their sex industry becoming decriminalised there are some jurisdictions that still fully criminalise sex work and others, including Victoria, experience varying human rights within inconsistent legalised frameworks. Evidence based, best practice in legislative frameworks need to be held up as an example for their achievement in human rights that they attain. These examples should be used as a guide for other jurisdictions to create a committed national approach to legislation based on the protection and promotion of human rights.